

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Federal-State Joint Board on
Universal Service

HARGRAY TELEPHONE COMPANY

Petition for Waiver of Section 54.301(b)
Local Switching Support Reporting Dates
for Projected Data Submissions

To: Chief, Wireline Competition Bureau

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) WC Docket + No. 08-71
) ~~CC Docket No. 96-45~~
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FILED/ACCEPTED

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Federal Communications Commission
Office of the Secretary

PETITION FOR WAIVER – EXPEDITED ACTION REQUESTED

Hargray Telephone Company ("Hargray"), pursuant to Section 1.3 of the Federal Communications Commission's ("FCC" or "Commission") rules,¹ hereby requests a waiver of Section 54.301(b) of the Commission's rules,² which establishes the reporting deadline for submitting projected data for Local Switching Support ("LSS"), for the 2007 and 2008 calendar years.

I. BACKGROUND

Section 54.301(b) of the Commission's rules requires each incumbent local exchange carrier ("incumbent LEC") that has been designated as an Eligible Telecommunications Carrier ("ETC") and serves a study area with 50,000 or fewer access lines to submit projected information that allows the Universal Service Administrative Company ("USAC") to calculate LSS amounts for inclusion in the federal

¹ 47 C.F.R. § 1.3.

² 47 C.F.R. § 54.301(b).

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Universal Service Fund ("USF") program for the coming year.³ These projected filings are due no later than October 1st of each year.⁴

Hargray is a small incumbent LEC that has been providing local telephone service in southeastern South Carolina for more than 60 years. Hargray routinely filed projected and historic data with USAC and received LSS until 2000, when it reported to USAC that its number of access lines exceeded 50,000.

Hargray did not submit projected information to USAC by October 1, 2006 for the 2007 calendar year, nor did it submit projected information to USAC by October 1, 2007 for the 2008 calendar year. At the time Hargray's projections for 2007 and 2008 were due, Hargray believed that it continued to have in excess of 50,000 access lines and therefore was not subject to the reporting requirement. That belief turned out to be incorrect. Hargray's actual line count revealed that, for 2007 and 2008, it had fewer than 50,000 access lines in its study area. Hargray did not confirm that its access lines had dropped below 50,000 until it conducted an actual line count and verification after the October 1, 2006 and October 1, 2007 deadlines for filing projected data for 2007 and 2008, respectively, had passed.

As explained above, the Commission's rules require all incumbent local exchange carriers designated as eligible telecommunications carriers with 50,000 or fewer access lines in their study area to file projected data to USAC by October 1st of each year.⁵ Hargray's status in 2007 and 2008 as an incumbent local exchange carrier designated as an eligible telecommunications carrier that serves 50,000 or fewer access lines in its

³ *Id.*

⁴ *Id.*

⁵ *Id.*

study area renders it subject to the requirement that it file projected data. Because the deadlines have passed and for good cause shown, Hargray now seeks a waiver of the filing date requirement in Section 54.301(b) to allow it to file projected data for 2007 and 2008. Hargray submitted the historic data for 2007 to USAC in a timely fashion.⁶

II. BASIS FOR RELIEF

Section 1.3 of the Commission's rules permits the Commission to waive its rules for good cause shown.⁷ A waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁸ In considering a waiver request, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁹

A. Special Circumstances

Historically, the number of access lines served by a local telephone company has grown with time, not declined, and Hargray's experience reflected that trend. In recent years, however, the number of wireline switched access lines in the United States has declined.¹⁰ Hargray's experience once again reflected the national trend. Hargray did not predict that in 2007 or 2008 its number of access lines would fall short of the 50,000

⁶ See 47 C.F.R. § 54.301(e)(1).

⁷ 47 C.F.R. § 1.3.

⁸ See, e.g., *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹⁰ *Trends in Telephone Service*, prepared by Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, at 7-3, Table 7.1, "Total U.S. Wireline Telephone Lines" (August 2008), available at: <http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284932A1.pdf>.

line threshold and trigger Section 54.301(b)'s filing requirement. In fact, Hargray lacked actual knowledge that it had fewer than 50,000 access lines until early 2008 when it conducted the line count and verification for calendar year 2007. The determination after the filing deadline that a reduction in access lines had occurred represents a special circumstance sufficient to justify the waiver requested herein.

B. Considerations of Hardship

The simultaneous loss of access lines and the loss of Local Switching Support for two consecutive years would impose a substantial financial hardship on Hargray, a small rural local exchange carrier. Moreover, Hargray is not permitted to raise its local telephone rates in South Carolina to recover the increased per-line costs caused by the need to recover fixed costs from a smaller number of subscribers. Therefore, the revenue shortfall would be felt more acutely and could potentially have an adverse effect on Hargray's ability to continue to provide quality service to its customers. The Commission previously has waived the deadlines found in Section 54.301(b) when potential hardship would have resulted from inflexible adherence to those deadlines.¹¹

III. REQUEST FOR EXPEDITED ACTION

Until the Commission grants this waiver request, Hargray will be unable to seek LSS for 2007 and 2008. This support is needed by Hargray so that it may continue to

¹¹ See, e.g., *Federal-State Joint Board on Universal Service; Dixon Telephone Company; Lexcom Telephone Company; Citizens Telephone Company of Higginsville, Missouri; Petitions for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Date*, Order, 21 FCC Rcd 1717 (WCB 2006); *Federal-State Joint Board on Universal Service; Smithville Telephone Company, Inc., Petition for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Date for an Average Schedule Company*, Order, 19 FCC Rcd 8891 (WCB 2004).

provide quality services to its customers. Hargray requests the Commission's expedited consideration of this Petition.

IV. CONCLUSION

For the foregoing reasons, Hargray requests that the Commission waive the deadline in Section 54.301(b) of the Commission's rules so that Hargray may submit projected data to USAC for calendar years 2007 and 2008.

Respectfully submitted,

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